

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 322-6083

August 1, 1990

Mrs. J--- D. L---
L---
XXX --- Street
--- ---, CA XXXXX

Re: Sales and Use Tax Applicability
Graphic Arts Industry
Account No. SR -- XX-XXXXXX

Dear Mrs. L---:

This is in reply to your May 29, 1990 letter concerning the application of sales tax to various charges you will make in connection with graphic services you provide to your customers.

Generally, a retailer's sale of tangible personal property is subject to sales tax unless specifically exempted by statute. (Rev. & Tax. Code § 6051.) On the other hand, the providing of services is not subject to sales tax. (Reg. 1501.) Sales and Use Tax Regulations 1540 and 1541 describe the application of tax to charges for design and typesetting services. Your specific questions are quoted below, each followed by our response.

1. Should sales tax be charged when we set type, either by hand or computer, and then provide the customer with a film or stat of that type, either the same size or enlarged or reduced?

Section 6010.3 of the Revenue and Taxation Code states that, for purposes of imposing sales tax, "sale" and "purchase" do not include (1) the fabrication or transfer by a typographer of composed type or reproduction proofs thereof for use in the preparation of printed matter, or (2) the fabrication or transfer of such reproduction proofs or impressed mats when the fabrication is for, and the transfer is to, a printer or published for use in printing. However, these provisions do not apply to the fabrication or transfer of a "pasteup", "mechanical" or "assembly" of which a reproduction proof is a component part.

Sales and Use Tax Regulation 1541(f)(1) provides that the composition of type, whether text type or display type, is considered the performance of a service, and tax does not apply to charges for such service, unless the service is part of the sale of printed matter. In such case, tax applies to the gross receipts from the sale of the printed matter without any deduction for typography. Further, charges for making paste-ups that incorporate any form of artwork are subject to tax. (Reg. 1541(f)(5).) I have enclosed a copy of the Board's publication "Tax Tips: The Graphic Arts Industry", which provides information concerning the application of the tax and includes the relevant section of the Board regulations.

The answer to your first question depends on the nature of the "film" or "stat" you provide to your customer. For example, Reg. 1541(f)(3) states that tax does not apply to the transfer of the direct product of the type composition service containing type matter only, whether that product is a paper or film (negative or positive) product. Tax also does not apply to the transfer of a direct copy of the product, on paper or film (negative or positive), provided the product or copy is to be used exclusively for reproduction. However, transfers of plates made from the properties referred to above are subject to tax, with no deduction made for the type composition service. Regulation 1541(f)(5) states that tax applies to the transfer of gelatin coated film to be transferred to fine mesh silk in the silk-screening process, and to the transfer of engraved printing plates and duplicate plates such as electrotypes, plastic plates, rubber plates, and other plates used in letterpress printing. In addition, transfers to exposed presensitized, wipe-on deep-etch, bi-metal and other plates used in offset lithography or of exposed plates produced by a photo-direct method, do not qualify as transfers of reproduction proofs of composed type and are therefore taxable.

If the "film" or "stat" you provide your customer is a direct product of the type composition, or a direct copy of that product which is to be used exclusively for reproduction, then the film or stat is an exempt reproduction proof and may be transferred to your customer tax-free. The enclosed Board pamphlet, particularly the descriptions of various processes on page 8, provides guidance concerning exempt reproduction proofs. If you have any further questions about the product you transfer to your customer, please write us again with a complete description of the process or processes you utilize.

2. Should sales tax be charged when we set type and then alter it in some way, such as by arching, and then provide the customer with a film or stat of it?

If the film or stat you provide your customer is an exempt reproduction proof (see discussion of Question No. 1), the fact that you alter the type in some way, such as by arching, would not affect the exempt nature of the transaction. However, if the type is combined with artwork, the transfer of the combined type and artwork is subject to tax without any deduction of the cost of typography.

3. Should sales tax be charged when our customer provides us with type and we provide only a film of the type?

As discussed above, as long as the film qualifies as an exempt reproduction proof, no tax applies to the sale.

4. Regarding preliminary art, should tax be charged if the customer purchases a pencil sketch and then uses the sketch as the art for his finished product, which he produces? The sketch itself would not be incorporated in the finished product, i.e. a pencil sketch as the idea for a wood sign.

Tax applies to the entire amount charged for items of tangible personal property such as drawings, paintings, designs or sketches transferred to the client, whether or not the property is suitable for display or is useful for actual reproduction. (Reg. 1540(c).)

5. Should tax be charged if we provide labor at a customer's shop, consisting of the following: consultation, altering of work previously produced either by self or one of customer's employees, camera production work, etc. We would act as employees, doing various tasks, and be paid on an hourly basis for which we would provide an invoice from our company.

Although you state that you would act as "employees" of your customer, we assume that you would actually be functioning as independent contractors. In a true employer-employee relationship, the employer is required by state and federal law to withhold income tax from the employees pay, and to include the employee in certain insurance programs. Based on your statement that you would bill the customer for your labor, we assume that you will be independent contractors rather than employees.

Section 6006 of the Revenue and Taxation Code defines "sale" to include the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting." (Rev. & Tax. Code § 6006(b).) Generally, when you alter work previously produced either by you or your customer, or when you do camera production work at your customer's shop, you are engaging in fabrication labor, and tax applies to the charges you make for such labor. However, if the alternations are made on films or stats which qualify as reproduction proofs and can therefore be transferred tax free, the charges for altering such films or stats are not subject to tax.

We assume that any consultation you provide is in conjunction with the alterations or camera production work you perform, and, as such, it is part of the fabrication labor. Your charges for such consultation are subject to tax if the charges for the labor are subject to tax. If you would like a more specific response to this question, please specifically describe the manner in which the consultation was provided.

Mrs. J--- G. L---

-4-

August 1, 1990
100.0085

We hope this answers your questions. However, if you need further information, please feel free to write again.

Very truly yours,

Janet Vining
Tax Counsel

JV:wak
2326C